IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1064 of 2004

in

SPECIAL CIVIL APPLICATION No 3550 of 2004

with

CIVIL APPLICATION No 2956 of 2004

Date of Decision: 29-04-2004

SOUTH GUJARAT UNIVERSITY

Versus

DILIP C SHAH

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Wh

For the Appellant
MR DC DAVE

For the Respondent
MRS. KETTY A. MEHTA
MR UTPAL M PANCHAL

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 Admit. Mr.Utpal M.Panchal, learned counsel for the respondent, waives service. On the request of learned counsel for the parties, the matter is taken up for final hearing.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2 Through this Letters Patent Appeal, order of the learned Single Judge dated 22-03-2004 passed in Special Civil Application No.3550 of 2004 is challenged by the appellant-South Gujarat University.

3 In exercise of powers under Section 11(4)(a) of South Gujarat University Act, 1965, Controller of Examinations (respondent) was suspended by the Vice Chancellor of the University on October 22, 2003. The order was challenged by the respondent through Application No.35 of 2003 before the Gujarat Universities Services Tribunal, constituted under the Gujarat Universities Services Tribunal Act, 1983. By interim order dated 04-11-2003 passed in Application No.35 of 2003, the Tribunal directed the appellant to call ordinary meeting of the Syndicate before 18-11-2003, and to inform about the action taken by the Vice Chancellor. It was left open for the respondent to prefer Appeal to the Syndicate on or before 07-11-2003, and if such Appeal is preferred, Syndicate to decide the same, on or before 18-11-2003. Accordingly, the Vice Chancellor informed the Syndicate about the suspension of the respondent, and in the meantime, the respondent had also preferred Appeal on 06-11-2003. The meeting of the Syndicate was fixed on 13-11-2003. The Syndicate passed Resolution ratifying the action taken by the Vice Chancellor. Having done so, it did not entertain the Appeal of the respondent. Consequently, the matter was decided by the Tribunal on 25-02-2004, thereby quashing the decision of Syndicate of the University, and directed it to take decision on the Appeal by a speaking order, adopting just and proper procedure and considering the principles of natural justice, within a period of one month from the date of receipt of copy of the order. Respondent was permitted to submit additional grounds in connection with his Appeal preferred, and if the same is done, Syndicate was directed to consider the same on merits within the period allowed along with the main Appeal, extending liberty to approach the Tribunal in the subject matter in accordance with law as and when cause of action arose. Costs of Rs.5000/- have also been awarded in favour of the respondent against the appellant. This order was challenged by the appellant through Special Civil Application No.3550 of 2004. Vide judgment and order dated 22-03-2004, Special Civil Application has been dismissed. Hence, this Letters Patent Appeal.

4 Shri Dhaval C.Dave, learned counsel appearing for the appellant, submits that Appeal is permissible against the order of Vice Chancellor, therefore, the moment ratification is accorded, order of suspension by the Vice Chancellor becomes order of Syndicate, hence, appeal is not maintainable because Section 11(4)(b) provides for appeal only against the order of Vice Chancellor, and not against the order of Syndicate, the purpose being, once the respondent is heard on ratification, the purpose of filing appeal is achieved. Even if the appeal is presumed to be competent, despite rectification, no fruitful purpose would be served by hearing the respondent in appeal, since decision in appeal cannot be different from the one taken in ratification. Further submission is that order of Vice Chancellor is not final, but requires ratification by the Syndicate. In other words, the submission is that power of Vice Chancellor is provisional subject to ratification by the Syndicate. Once it is ratified, it becomes order of Syndicate. With a view to bring home the point, two decisions, namely, Miss Sonal V.Shah and others vs. Gujarat University and another ((1981) 32 GLR 934) and The Vice-Chancellor, Jammu University and another vs. Dushinant Kumar Rampal (AIR 1977 SC 1146) are brought to our notice.

5. Smt.Ketty A.Mehta, learned counsel for the respondent, submits that the course adopted by the appellants is not in accordance with law. The day Syndicate took the decision on the information of Vice Chancellor on 13-11-2003, appeal preferred by the respondent was also before the Syndicate. Therefore, submission that the respondent was heard in terms of Section 15 of the Gujarat Universities Services Tribunal Act, 1983, cannot be accepted, since accepting that submission would defeat the statutory right of respondent under Section 11(4)(b) of the South Gujarat University Act, 1965. Consequently, the order of Syndicate is liable to be set aside, and Syndicate directed to consider and decide the information of Vice Chancellor suspending the respondent, and the appeal preferred by the respondent.

6. Before we consider the question advanced by counsel for the parties, it is necessary to make mention of some relevant provisions of the two Acts. Section 11(4)(a) and (b) of the South Gujarat University Act, 1965 read as under:

"11(4)(a) In any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, he shall take such action

as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary course dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University such person shall be entitled to prefer an appeal through the said officer, authority or body to the Syndicate within one month from the date on which such action is communicated to him."

The Gujarat Universities Services Tribunal Act, 1983 (Gujarat Act No.1 of 1988) has been enacted to provide for the constitution of a Tribunal for the purpose of determining disputes relating to conditions of service of the members of the teaching, other academic and non-teaching staff of the Universities in the State of Gujarat, for procedure, for imposition of penalty on any such member and for matters connected therewith. Part II of the Act provides for establishment of Tribunal. Section 3 deals with constitution of the Tribunal and Section 7 jurisdiction thereof. Section 8 deals with disputes to be decided by the Tribunal. Sections 7 and 8 are quoted:-

"7(1) The Tribunal shall have jurisdiction to entertain and decide disputes referred to in section 8, all suits and proceedings transferred to it under subsection (2) of section 13 and appeals made under sub-section (3) of section 14.

(2) Where any order of dismissal, removal or reduction in rank or otherwise termination of service of a University employee is decided by the Tribunal to be wrong, unlawful or otherwise unjustified, the Tribunal may pass an order directing that the University employee shall be reinstated in service or, as the case may be, restored to the rank, which he held immediately before his dismissal, removal, reduction in rank or otherwise termination of service by the University and the University shall forthwith comply with such direction.

(3) Notwithstanding anything continued in any other law for the time being in force, where the Tribunal has jurisdiction to entertain and decide a dispute as aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide such dispute and any such dispute pending before any person, officer, or authority

on the appointed day shall, as soon as may be, be transferred to the Tribunal for its decision.

8. Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University employee, the University or, as the case may be, the University employee may make an application to the Tribunal for the decision of the dispute."

Section 12 attaches finality to the decision of the Tribunal, which shall not be called in question before any Civil Court or any other authority. Section 13 bars the jurisdiction of Civil Courts in matters which fall under the jurisdiction of the Tribunal in terms of Section 7 and 8 of the Act. Part III of the Act provides for procedure for imposition of penalty on University employees. Sections 14 and 15 are quoted:-

"14(1) No University employee shall be dismissed or removed from University service or reduced in rank nor shall his service be otherwise terminated by the University except after an inquiry in which the employee has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that nothing in this sub-section shall apply to a University employee who is appointed temporarily for a period less than a year or an employee appointed temporarily on a leave vacancy for the period of such vacancy.

(2) No penalty, other than a penalty referred to in sub-section (1), shall be imposed on a University employee unless such employee is given a reasonable opportunity of being heard.

(3) A University employee aggrieved by an order of any penalty imposed on him under sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date of the order passed by the disciplinary authority.

15. Where a University employee is suspended pending any inquiry proposed to be held against him, the employee shall, during the period of suspension, be entitled to such subsistence allowance and on such conditions as may be prescribed:

Provided that where an order of suspension is made by an officer or authority,

not being the disciplinary authority, the facts of such suspension together with the grounds therefor shall be communicated by the officer, or, as the case may be, authority within seven days after such suspension to the disciplinary authority and such suspension shall be subject to the ratification by the disciplinary authority within a period of forty-five days from the date ofthe receipt of the communication by the disciplinary authority and where such ratification is not communicated to the officer or authority making the order of suspension within the said period of forty-five days, the suspension of the employee shall cease to have effect on the expiry of such period."

7. Having quoted the above provisions of the two Acts, we proceed to deal with the question arising for decision in this case.

8. After the Vice Chancellor takes action in terms of Section 11(4)(a), he has to furnish information thereof at the earliest opportunity to the officers, authority or body, which would have, in the ordinary course, dealt with the matter. Under Section 11(4)(b) person who is affected by the order of Vice Chancellor passed under Section 11(4)(a) is entitled to prefer appeal to the Officer/authority/body, whose jurisdiction has been exercised by the Vice Chancellor for taking a decision within one month from the date on which such action is communicated to him. Under Section 15 of the Gujarat Universities Services Tribunal Act, 1983, the suspension has to be ratified within the period envisaged under the proviso to the Section, otherwise, consequences stated therein follow. The result, therefore is, action of Vice Chancellor requires ratification by Syndicate (See Miss Sonal V.Shah (supra)). Appeal by person aggrieved by the order of the Vice Chancellor is a statutory appeal, is also to be decided by Syndicate. Before the Syndicate, there are two matters, namely, ratification of order of suspension in terms of Section 15 of Gujarat Universities Services Tribunal, 1983, action taken by the Vice Chancellor under Section 11(4)(a), and appeal preferred by the aggrieved person under Section 11(4)(b). Therefore, both have to be considered and decided simultaneously. Giving this interpretation to the provisions contained in the two Acts would make both the provisions workable, otherwise, one will defeat the other and defeat the well-known principle that the Legislature enacts laws with a purpose to deal with situations. It does not enact a legislation

without justification and purpose. Similar situation arose in Dushinant Kumar Rampal case (supra). The Vice Chancellor took action in emergency. Thereafter, immediately after passing the order of suspension placed it before the Syndicate at its next meeting. The respondent had also in the meantime submitted his representation against the order of suspension and this representation also came up before this meeting of Syndicate. The Syndicate considered the order of suspension made by the Vice Chancellor and also the representation submitted by the respondent, and passed a Resolution rejecting the representation of the respondent regarding the action taken by the Vice Chancellor, and directing that articles of charge be framed and communicated to the respondent and asked to submit explanation in writing. The facts of this case are identical, therefore, Syndicate should have taken the decision on the action of Vice Chancellor and the appeal of respondent simultaneously. ACTLIS LEGITIMT NON RECIPLIM MODLIM means when doing of a thing in a particular manner is sanctioned, then the thing cannot be done in a different manner. When a statutory power is conferred upon a Court and mode of exercising it is pointed out, it means no other mode is to be adopted. (Taylor vs. Taylor ((1986) ICL D 426). Similar view has been taken in State of Uttar Pradesh vs. Singara Singh (AIR 1964 SC 358), Hukumchand Shyamlal vs. Union of India (AIR 1976 SC 789) and Delhi Transport Corporation vs. Delhi Mazdoor Union (AIR 1991 SC 101) by the Apex Court and Nathu vs. Amar Nath Agarwal (AIR 1995 All 420) by Allahabad High Court and Noor Hussain and another vs. Financial Commissioner and three others (AIR 1995 Jammu and Kashmir 102) by Jammu and Kashmir High Court.

9. From consideration of the matter, the irresistible conclusion is that the appellants did not decide the matter in accordance with law and procedure, therefore, contention that the respondent does not deserve further hearing, since he has already been heard for two hours in terms of Section 15 of Gujarat Universities Services Tribunal Act, 1983, cannot be accepted. The respondent has legitimate and statutory right to be heard in his Appeal. Therefore, the Syndicate should have decided both the questions simultaneously instead of deciding one. Therefore, the approach of the appellants to the matter has not been in consonance with law and procedure, so action taken is set aside. The University is directed to call meeting of the Syndicate within two months and decide both the action taken by the Vice Chancellor and the appeal of the respondent afresh, after giving opportunity of hearing to

him. However, he would continue to be under suspension till the Syndicate decides the matter. Mr.Dhaval C.Dave submits that the Tribunal awarded costs of Rs.5000/- to the respondent, which may be set aside, since facts of the case do not justify imposition of costs. After going through the matter, we find that the questions raised by the appellants are not without justification. Further, there was no lack of bonafides on its part and indulgence in litigation giving it undue advantage. Therefore, it was not a fit case for award of costs. Consequently, the order of Tribunal awarding costs of Rs.5000/- to the respondent is set aside. Respondent to refund the amount to the appellant.

Accordingly, Letters Patent Appeal and the Civil Application are disposed of in terms aforesaid, leaving the parties to bear their own costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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